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Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[22 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Human Rights Council should establish an International Investigative Mechanism into human rights violations in Libya

In Libya today, vying factions, militias and armed groups have struggled to gain territory and power, and in the process have divided the country along geographical and ideological lines. Serious violations of international humanitarian law and other violations and abuses of human rights law are committed by all sides with absolute impunity. These include arbitrary detentions, abductions, enforced disappearances, torture and ill-treatment, unlawful killings, indiscriminate attacks and forced displacement.

Libya's domestic judicial system is highly dysfunctional and is unable to provide recourse for victims of human rights violations or bring those responsible for these abuses to justice. Perpetrators of serious human rights abuses continue to operate with absolute impunity without fear of accountability.

Given the scale of impunity and the myriad challenges to the administration of justice, promoting accountability in Libya requires deliberate and coordinated effort, by multiple actors at the national and international levels. As early as February 2016, the High Commissioner called on the Human Rights Council to consider establishing a mandate for an independent expert on Libya. (*See* A/HRC/31/47 ¶ 85(a).) This call has been echoed and supported by Amnesty International and other organizations. To date, however, it has been left unanswered. We call on the Human Rights Council to establish a mandate on Libya, to create an international investigative mechanism tasked to investigate, document and report on the ongoing violations of international human rights law and humanitarian law, with the view of ending impunity and ensuring full accountability.

For example, Mahmoud al-Werfalli, field commander of the Special Forces Brigade Al Saiqa affiliated to the LNA has committed a series of extra-judicial killings. Despite the arrest warrant issued against him by the International Criminal Court (ICC) for alleged war crimes, al-Werfalli has continued to carry out extrajudicial executions as shown in a video of him that circulated on social media on January 241. The footage shows al-Werfalli standing in front of 10 unarmed men blindfolded and lined up on their knees with their hands tied behind their back. Al-Werfalli is then shown shooting a single bullet to the head of each man, after which he continues shooting at the then dead bodies.

In 2017, a number of mass graves were uncovered in Benghazi. On at least four occasions, groups of bodies were found in different parts of the city with their hands bound behind their backs, and in some cases blindfolded with signs of torture and execution-style killing. On October 2017, the bodies of 36 men were found on a deserted road south of the town of al-Abyar, including of a medical student and a 71 year-old Sufi Sheikh who had been abducted two months earlier.

In July 2017, the LNA tightened its siege on the city of Derna in its fight against the Derna Mujahideen Shoura Council, hindering access to food, petrol and medical supplies, resulting in a rapid deterioration of the humanitarian situation in the city. In November 2017, a series of air strikes on Derna killed scores of civilians and injured many more, including children.

In Western Libya on at least nine occasions throughout the last year, militias used explosive weapons with wide-area effects, including rocket propelled grenades, in densely populated civilian areas, causing damage to civilian homes and

1 Amnesty International, *Libya: Special Forces commander apparently filmed committing extrajudicial executions must be handed over to the ICC*, 25 January 2018, available at: https://www.amnesty.org/en/latest/news/2018/01/libya-special-forces-commander-apparently-filmed-committing-extrajudicial-executions-must-be-handed-over-to-the-icc/

infrastructure. These indiscriminate attacks have also caused a number of civilian dead and wounded. In one case, RPGs hit a nearby beach, killing five civilians- two women and three children- from the same family.

The post of Public Prosecutor remains vacant, while attacks and threats against judges and lawyers have stalled the criminal justice system.

ABDUCTIONS AND ARBITRARY DETENTION

Militias, armed groups and security forces affiliated to rival governments are responsible for the abduction and arbitrary detention of thousands of people. Militias carry out abductions with the aim of extracting ransoms from families, collecting detainees for future prisoner swaps, or silencing criticism.2 Since 2014, militias have abducted and unlawfully detained hundreds of people based on opinions, origin, perceived political affiliations or perceived wealth. Journalists, activists and human rights defenders are particularly vulnerable to enforced disappearance in relation to their criticism of the abuses committed by armed groups, or openly opposing political or religious factions.

Migrants, refugees and asylum-seekers have also been subject to widespread and systematic serious human rights violations and abuses, be they at the hands of smugglers, armed groups, or militias and officials alike. It is estimated that as of January 2018, up to 5000 people are held in official detention centres in Libya run by the General Directorate for Combating Illegal Migration (DCIM), a division of the Ministry of Interior of the GNA.3 They are held in conditions of extreme overcrowding, lacking access to medical care and adequate nutrition. Militias and detention guards systematically subject those detained to torture and other ill-treatment, including sexual violence, severe beatings and torture for the purpose of extortion to gain release.4 In addition to these official DCIM centres, armed groups and criminal gangs are running thousands of illicit holding sites throughout the country where they detain and ill-treat migrants and refugees, in a manner similar to those held in official centres, for the purpose of extortion to secure a ransom from their families in exchange for their release, which further feeds the smuggling business in Libya. All those detained, regardless of their status including asylum seekers fleeing persecution, are considered illegal and remain in official or unofficial facilities with no meaningful judicial oversight or effective avenue to challenge the legality of their detention.

CONCLUSION

The dire, and degenerating, human rights situation in Libya has been chronicled by the High Commissioner for Human Rights in numerous reports. (*See, e.g.*, A/HRC/34/42 & A/HRC/31/47). Given its scope and nature, addressing it in any meaningful way requires coordinated action by many entities.

Primary among them is the Libyan authorities. In this regard, we call on authorities in Libya to immediately release detainees held without charge, or charge them with recognizably criminal offences and promptly bring them to trial in proceedings that meet international fair trial standards. Moreover we call on such authorities to build a justice system where those responsible for abductions, enforced disappearances and other crimes are prosecuted and brought to justice. We call on the Libyan authorities to immediately release all migrants and refugees arbitrarily detained by DCIM and to make the necessary legislative changes to decriminalize irregular entry, stay and exit.

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2 Amnesty International, *Libya: University Professor latest in string of victims targeted in epidemic of militia abductions*, 08 May 2017, available at: https://www.amnesty.org/en/latest/news/2017/05/libya-university-professor-latest-in-string-of-victims-targeted-in-epidemic-of-militia-abductions/

3 Amnesty International, *Libya: A year after Italy-Libya migration deal, time to release thousands trapped in misery*, 02 February 2018, available at: https://www.amnesty.org/en/latest/news/2018/02/a-year-after-italy-libya-migration-deal-time-to-release-thousands-trapped-in-misery/

4 Amnesty International, *Libya's dark web of collusion: abuses against Europe-bound refugees and migrants*, 12 December 2017, available at: https://www.amnesty.org/en/documents/mde19/7561/2017/en/

We commend the Libyan authorities for their willingness to seek assistance from the Human Rights Council, and acknowledge the important work of other international entities and processes, including the United Nations Support Mission in Libya and the International Criminal Court. Yet more is needed to secure peace, accountability, and justice in Libya. In this regard, we call on the Council to mandate an international investigative mechanism that would:

- Conduct a thorough investigation into the violations of international human rights and humanitarian law in Libya since 2011 with the view to contributing to ending the prevailing environment of impunity;
- Identify alleged perpetrators of human rights violations and abuses in Libya with the aim to bring these perpetrators to justice;
- Formulate recommendations on steps to be taken towards guaranteeing accountability and preventive measures to avoid future crimes;
- Engage with Libyan authorities and act as the focal point with stakeholders in particular the UN Support Mission, the International Criminal Court and the African Court for Human Rights, in order to provide the support and expertise for the immediate improvement of the human rights situation and the fight against impunity in Libya;
- Present an oral briefing and a written report to the Human Rights Council during its 39th and 40th sessions; and
- Present a written report to the General Assembly, Security Council and other relevant international and regional bodies.